
Appeal Decision

Site visit made on 22 March 2017

by Brendan Lyons BArch MA MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6th April 2017

Appeal Ref: APP/G5750/D/17/3167934
17 Harrow Road, London E6 1JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 1, Paragraph A.4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Aziz Rehman against the decision of the Council of the London Borough of Newham.
 - The application Ref 16/03512/PREHH, dated 9 November 2016, was refused by notice dated 16 December 2016.
 - The development proposed is described as a single storey rear extension projecting 5.10 metres, height at eaves 2.805 metres, and maximum height 3.055 metres.
-

Decision

1. The appeal is allowed and prior approval is not required under the provisions of Schedule 2, Part 1, paragraph A.4. of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('the GPDO') for a single-storey rear extension projecting 5.10 metres, height at eaves 2.805 metres and maximum height 3.055 metres, at 17 Harrow Road, London E6 1JS, in accordance with the details submitted pursuant to Schedule 2, Part 1, Paragraph A.4.(2) of the GPDO.

Main Issue

2. The main issue in the appeal is whether the proposed extension would comprise development permitted by the provisions of the GPDO.

Reasons

3. The appeal relates to a mid-terrace two-storey house in an inner suburban location. The house has a layout typical of its period, with an original two-storey rear 'outrigger' wing. The house has previously been enlarged with a flat-roofed single storey extension that fills the space to the side of the outrigger and projects beyond the outrigger to the rear by some 2.88m, across the full width of the plot.
 4. It is now proposed to add a further single-storey extension to the rear, which would project by some 2.22m, thereby bringing the total depth to 5.1m as set out in the above description of development taken from the application form. The width of the extension would be some 2.88m, so that it would be aligned with the width of the original outrigger.
-

5. Certain single-storey rear extensions up to 4.0m in height are permitted by Class A of Part 1 of Schedule 2 to the GPDO. Paragraph A.1.(f) permits extensions that would extend beyond the rear wall of a terraced house by up to 3.0m. Paragraph A.1.(g) permits, until 30 May 2019, those that would extend by up to 6.0m, subject to prior notification and approval where necessary.
6. The Council refused the application on the basis that the proposal did not comply with the limitations applicable to development permitted under paragraph A.1.(g). In particular, the Council states that the proposal would not be permitted development because the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would have a width greater than half the width of the original dwellinghouse.
7. These restrictions with regard to the width of side extensions are actually set out in paragraph A.1.(j) of the GPDO, rather than paragraph A.1.(g). The appellant argues that the Council has incorrectly taken the side extension into account, when only internal works are proposed in the existing side extension¹, and that the proposed rear extension should be considered in its own terms.
8. The Council's assessment relies on the appeal proposal being taken in conjunction with the earlier extension as 'the enlarged part of the dwellinghouse', in the terms of the GPDO. If that approach were correct, and the total enlargement was seen as one, then the proposal would not comply with the restrictions imposed by paragraph A.1.(j). The side wall of the outrigger would comprise a 'side elevation' of the original dwellinghouse, and the enlarged part of the dwellinghouse would extend beyond it². The total width of the enlargement, as represented by the width of the existing rear extension, would be greater than half the width of the original house.
9. It appears to me that, under this approach, the Council might also have concluded that the proposal would fail to comply with paragraph A.1.(g), as the total depth of the combined extensions would be greater than 6.0m from the part of the original main rear wall to the side of the outrigger³.
10. However, nothing turns on that, because in my view the Council's approach is flawed. At the time of its decision, a recent High Court judgement⁴ had clarified that for the purpose of interpretation of this part of the GPDO, the 'enlarged part of the dwellinghouse' should be regarded only as the proposal now under consideration, and that earlier extensions, whether permitted by the GPDO or by express decision of the local planning authority, should not be taken into account in assessing compliance with size limitations for permitted development. As a result of the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2017, that interpretation will no longer apply to applications made from 6 April 2017, but in the case of this appeal, the proposed new extension must be assessed independently against the GPDO restrictions.

¹ Through the formation of a shower room

² This interpretation is confirmed by the Department for Communities and Local Government *Permitted development for householders: Technical Guidance* (April 2016). Side elevation walls are explained in the diagram on p.23.

³ 'Stepped' rear elevation walls and non-compliant forms of extension are explained by the *Technical Guidance* in the diagrams on p.19.

⁴ *Hilton v SSCLG & London Borough of Bexley* [2016] EWHC 1861 (Admin)

11. In that assessment, the proposal would constitute a rear extension only, as it would not project beyond the side wall of the original outrigger. Its total projection from the rear wall of the original dwellinghouse would be less than 6.0m. There is no dispute over its height, which would be less than 3.0m at the eaves and less than 4.0m overall. Therefore it would be within the limitations set by paragraph A.1.(g) of the GPDO. The Council has carried out the required notification of neighbours⁵, in response to which no objections were received. As a result, prior approval of the proposal's impact on the amenity of adjoining premises is not required.
12. The appellant's argument that paragraph A.1(j) was not relevant because the proposed new extension would not touch the part of the existing extension beyond the side wall⁶ has some merit, particularly as there is some physical evidence that the side extension was added later to an earlier rear extension. However, as the proposal would be joined to the existing rear extension, which is also joined to the side extension, the entire could be viewed as a single enlargement, albeit built at different times⁷. The key issue remains whether or not the 'enlarged part of the dwellinghouse' is to comprise existing extensions.

Conclusion

13. For the reasons set out above, I conclude that the appeal proposal would comprise development permitted by Schedule 2, Part 1, paragraph A.1.(g) of the GPDO and that prior approval is not required. The appeal should therefore be allowed. The appellant should note that the GPDO requires at paragraphs A.4.(13), (14) and (15) that the development shall be completed on or before 30th May 2019 and that the developer shall notify the local planning authority in writing of the completion of the development as soon as reasonably practicable after completion. Such notification shall include the name of the developer, the address or location of the development, and the date of completion.

Brendan Lyons

INSPECTOR

⁵ GPDO Schedule 2, Part 1, paragraph A.4.(5)

⁶ Drawing support from the diagram on p.28 of the *Technical Guidance*

⁷ See *Technical Guidance* p.27